



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2019-0904]**

**RIN 1625-AA00**

### **Safety Zone; Isabel Holmes Bridge, Wilmington, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

---

**SUMMARY:** The Coast Guard is establishing two temporary safety zones on the navigable waters of the Cape Fear River at the Isabel Holmes Bridge in Wilmington, North Carolina. These temporary safety zones are intended to restrict vessel traffic on the Cape Fear River from December 15, 2019, through February 15, 2020, while work crews repair the bridge and replace power cables crossing under the river. This rule prohibits vessels or persons from being in the safety zones unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through February 15, 2020. For the purposes of enforcement, actual notice will be used from December 15, 2019, through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0904 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, contact Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: (910) 772–2221, email: [Matthew.I.Tyson@uscg.mil](mailto:Matthew.I.Tyson@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NCDOT	North Carolina Department of Transportation
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the North Carolina Department of Transportation (NCDOT) did not notify the Coast Guard of the details of the bridge maintenance project until November 28, 2019. Immediate

action is needed to protect persons and vessels from the hazards associated with this project. It is impracticable and contrary to the public interest to publish an NPRM because a final rule needs to be in place by December 15, 2019, to protect against hazards to the work crew and the public during the project.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to public interest because immediate action is needed to protect persons and vessels from the hazards associated with this bridge maintenance project, which begins on December 15, 2019.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously, 33 U.S.C. 1231). The COTP North Carolina has determined that potential hazards associated with the bridge maintenance project, scheduled from December 15, 2019, through February 15, 2020, is a safety concern for workers and mariners on the Cape Fear River at the Isabel Holmes Bridge in Wilmington, North Carolina. This rule is necessary to protect safety of life from the potential hazards associated with the project.

### **IV. Discussion of the Rule**

This rule establishes two safety zones on a portion of the Cape Fear River from December 15, 2019, through February 15, 2020, to be enforced while NCDOT conducts a bridge maintenance project. The project will be in two parts: the repair of the Isabel Holmes Bridge, and replacement of the power cables crossing under the river. The bridge repair portion will impact, but not close, the navigable channel. The cable

replacement portion will require the navigable channel to be closed. NCDOT will begin staging equipment around the bridge on December 15, 2019.

The first of the two safety zones will extend 100 feet from equipment while it is within the navigable channel during the entire maintenance period. The normal horizontal clearance of the channel beneath the bridge is 200 feet. As a result, smaller vessels will be able to transit under the bridge during this work phase. Maintenance equipment will be able to be relocated outside of the navigable channel for larger vessels during this stage of the project if at least a 48-hour notice is given. This advance notice shall be given to the bridge tender at (910) 251-5774 or via VHF-FM marine channel 13 (165.65 MHz).

The second safety zone will be enforced, within 300 feet of the bridge, located at approximate position, 34°15'06"N, 077°57'03"W (NAD 1983) during the cable replacement portion of the project. This cable replacement may last from 6 AM to 6 PM on four separate days, finishing on February 15, 2020. The public will be notified at least 48 hours in advance of each complete closure via broadcast notice to mariners.

The duration of these zones is intended to protect persons, vessels, and the marine environment on the navigable waters of the Cape Fear River during the bridge maintenance project. No vessel or person will be permitted to enter either safety zone unless specifically authorized by the Captain of the Port North Carolina or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zones. The ability of vessels to enter or transit a portion of the Cape Fear River near the Isabel Holmes Bridge will be impacted while two safety zones are in place during a bridge maintenance project lasting two months, from December 25, 2019, through February 15, 2020. The project will be in two parts: the repair of the Isabel Holmes Bridge, and replacement of the power cables crossing under the river. The bridge repair portion will impact, but not close, the navigable channel. Smaller vessels will be able to transit under the bridge during the repair work. Larger vessels will be allowed to transit the channel during the repair work provided that they provide a 48-hour notice requesting that equipment be relocated from the channel. The Coast Guard will issue a Local Notice to Mariners and transmit a Broadcast Notice to Mariners via VHF-FM marine channel 16 regarding the safety zone. The cable replacement portion will require the navigable channel to be closed. Specific enforcement dates and times for complete channel closures will be broadcast at least 48 hours in advance. However, this

portion of the Cape Fear River is a low traffic area during this time of the year.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section above.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves two safety zones lasting two months. The first will prohibit entry within 100 feet of work equipment at the Isabel Holmes Bridge on the Cape Fear River, and the second lasting 12 hours on four separate days that will prohibit entry within 300 feet of the bridge while new power cables are placed under the navigable channel. The rule is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.



## **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### **PART 165 – REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0904 to read as follows:

#### **§ 165.T05-0904 Safety Zone; Isabel Holmes Bridge, Wilmington, NC.**

- (a) Location. The following areas are safety zones:

(1) Safety Zone 1. All navigable waters of the Cape Fear River within 100 feet of work equipment at the Isabel Holmes Bridge in Wilmington, NC;

(2) Safety Zone 2. All navigable waters of the Cape Fear River within a 300 foot radius of the Isabel Holmes Bridge in Wilmington, NC, centered at approximate position 34°15'06"N, 077°57'03"W (NAD 1983).

- (b) Definitions. As used in this section---

Captain of the Port means the Commander, Sector North Carolina.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port North Carolina (COTP) for the enforcement of the safety zone.

Work crews means persons and vessels involved in the bridge maintenance project.

(c) Regulations. (1) The general regulations governing safety zones in § 165.23 apply to the areas described in paragraph (a) of this section.

(2) With the exception of work crews, entry into or remaining in either safety zone is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's designated representative. All other vessels must depart the zone(s) immediately upon activation.

(3) Larger vessels may request maintenance equipment be relocated outside of the navigable channel if at least a 48-hour notice is given. This advance notice shall be given to the bridge tender at (910) 251-5774 or via VHF-FM marine channel 13 (165.65 MHz).

(4) The Captain of the Port, North Carolina can be reached through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina at telephone number 910-343-3882.

(5) The Coast Guard and designated security vessels enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65 MHz) and channel 16 (156.8 MHz).

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement periods. This section will be enforced for:

(1) Safety Zone 1 from December 15, 2019 through February 15, 2020; and

(2) Safety Zone 2 from 6 AM through 6 PM on days when power cables are being placed under the navigable channel.

(f) Public notification. The Coast Guard will notify the public of the active enforcement times at least 48 hours in advance by transmitting Broadcast Notice to Mariners via VHF-FM marine channel 16.

Dated: December 11, 2019.

Bion B. Stewart,  
Captain, U. S. Coast Guard,  
Captain of the Port North Carolina.

[FR Doc. 2019-27063 Filed: 12/13/2019 8:45 am; Publication Date: 12/16/2019]